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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,711	06/26/2003	Stephen D. Pacetti	50623.266	5769
7590 11/07/2006				
Victor Repkin Squire, Sanders & Dempsey L.L.P. Suite 300 One Maritime Plaza San Francisco, CA 94111				
			EXAMINER AHMED, SHEEBA	
			ART UNIT 1773	PAPER NUMBER
DATE MAILED: 11/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,711

Applicant(s)

PACETTI, STEPHEN D.

Examiner

Sheeba Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendments

1. Amendments to claims 1 and 12 have been entered in the above-identified application. Claim 21 has been cancelled. **Claims 1-20 and 22-29 are pending.**

The Applicant's Remarks include a response to the Objection of Claims 2, 4, 6-7. However, no such objection was made in the Office Action mailed on April 20, 2006. Clarification is required in response to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

independent claims 1 and 12 have been amended to recite that "the hydrophobic polymer in the first layer and the hydrophilic or amphiphilic polymer in the second layer have a mass ratio between about 49:1 and about 19:1". However, there is no support for such an amendment in the original disclosure, i.e., the Specification or the original claims. The Specification on Pages 11 and 12 discusses the embodiment where a blend

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of the hydrophobic and hydrophilic polymers is used in the topcoat (4) and wherein the total amount of solids in the solution of the blend of the hydrophobic and hydrophilic polymers can be between about 99:1 and about 1:1 **OR** "between about 49:1 and about 19:1". Original claim 11 also states that the first layer further includes at least one hydrophilic or amphiphilic polymer wherein the mass ratio between the hydrophobic polymer and the hydrophilic polymers in the first layer is within a range of between about 49:1 and about 19:1. However, there is no support for a mass ratio of between about 49:1 and about 19:1 for the hydrophobic polymer in the first layer and the hydrophilic or amphiphilic polymer in the second layer. Appropriate correction or clarification is required. All new matter must be cancelled in repose to this Office Action. Furthermore, Applicants are reminded that prior art rejections of record may be re-instated in response to the cancellation of the new matter.

3. Claims 22-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Hossainy et al. (US 6,926,919 B1).

Hossainy et al. disclose drug eluting vascular stents having a coating including a blend of a hydrophobic and hydrophilic polymer and treating the coating with a stimulus for enriching a region close to the outer surface of the coating with a hydrophilic polymer such that the region of the coating close to the outermost surface of the stent has a higher content of the hydrophilic component than the hydrophobic component (Column 2, lines 12-40). The coating further comprises an optional primer layer and an optional topcoat layer (Column 2, lines 42-60). Poly(ethylene-co-vinyl alcohol) is one example of

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a hydrophobic component and can be used to fabricate the topcoat or primer layers as well. Other examples include the list given in Columns 3 and 4. All limitations of claims 22-29 are recited in the above reference.

Response to Arguments

4. Applicant's arguments filed on July 11 have been fully considered but they are not persuasive. The Examiner thanks the Applicants for pointing out the typographical error in the rejection of claims 1-29 under 35 U.S.C. 102(b) as being anticipated by Hossainy et al. (US 6,926,919 B1). The claims were correctly rejected under 35 U.S.C. 102(e) as being anticipated by Hossainy et al. (US 6,926,919 B1) as evidenced by the quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejection.

The Declaration filed on July 11 under 37 CFR 1.131 has been considered but is ineffective to overcome the Hossainy reference. The Hossainy reference is a U.S. patent or U.S. patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306 (Please refer to claim 1 of the Hossainy reference and claim 26 of the instant application). If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned,

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the reference may be disqualified as prior art by an affidavit or declaration under 37 CFR 1.130. See MPEP § 718.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

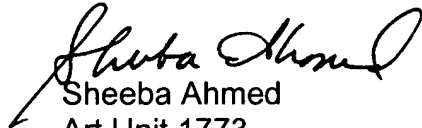
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Monday and Tuesdays from 9am to 2pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sheeba Ahmed
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November 4, 2006